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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,839	09/15/2003	Robert D. Montgomery	1056	5292

7590 09/14/2005

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EXAMINER

ENSEY, BRIAN

ART UNIT	PAPER NUMBER
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2646

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,839

Applicant(s)

MONTGOMERY, ROBERT D.

Examiner

Brian Ensey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07/05/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: On page 5, line 3, there is a an error, “intergrading” should be changed to ‘integrating.’ Additionally, applicant should be consistent in naming item 30. See page 6, line 8 “receiver (30)” and line 17 “on/off switch (30).”

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “22” has been used to designate both “internal electrical components” and an external wire connection to a switch in Fig. 5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because Figure 5 is confusing in its illustration of “hinge mechanism (52)”. Figure 5 apparently shows 17 such hinge mechanisms for flexibility of the brim where such bending points pass through solid objects such as ‘display panel (34)’ and ‘calculator (40)’. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the

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sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 22 has been renumbered 21. Dependency of renumbered claim 21 is now regarded as claim 20 and must be corrected in response to this office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the limitation "said electronics" in line 16. There is insufficient antecedent basis for this limitation in the claim.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited. Claim 20 is unclear in that it refers to specific components throughout the claim in a manner that seems to be merely a jumble of claims combined into one single claim. For example: line 2 "said brim having a top area", line 12 "said brim further includes at least one display panel thereon" and line 15 "said brim includes at least one hinge ...". Combination of such feature would ensure a more clear interpretation of the claim. For example, "said brim having a top area including at least one display panel thereon and further including at least one hinge...". Further, Claim 20 recites the limitation "said activation means includes at least one keyboard" in lines 10 and 11 and "said activation means includes at least one on/off switch" in lines 11 and 12. It is unclear which limitation the applicant is claiming.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson WO/ 95/18490 in view of Duda U.S. Patent Application Publication 2002/0186180 and further in view of Gilstrap U.S. Patent No. 5,450,629.

Regarding claim 20, Jackson discloses headgear and electronics in combination comprising: a hat (10) formed from a brim (24) interconnected to a cap (12), said brim having a top area, said cap having a top section (26), said cap having a sweatband (28) section, said brim having internal electrical components therein (96), said cap having internal electrical components therein (92), said top area having activation means (74) for activating said internal electrical components, said cap including adjustment means (28) for variably adjusting the size of said cap, said hat further including an earpiece (60) electrically interconnected to a speaker and receiver, said earpiece is further attached via a hinge mechanism (64), said earpiece may be conveniently folded into a concealed position within said hat, said activation means includes at least one keyboard (74), said activation means includes at least an on/off switch (71), said brim further includes at least one display panel (132) thereon, said electrical components including wafer batteries (94) and a storage compartment for containment of said battery (See Figs. 1, 2, 8 and page 4, line 1 to page 5, line 7, page 6, lines 4-13 and page 7, lines 9-25). Jackson does not expressly disclose a brim includes at least one hinge so as to allow said brim to be flexible to protect said electronics from being broken. However, Jackson teaches flexible conductors and circuit boards in the cap and brim to allow flexibility and minimize damage to electrical/electronic components. Further, Gilstrap teaches a foldable hat with a hinged brim for flexibility and reduced storage size (See Figs. 1-3, 11 and . It would have been obvious to one of ordinary skill in the art at the time of the invention to use the hinged brim of Gilstrap in the hat of Jackson for increased flexibility and portability without damage to electrical/electronic components. Jackson does not expressly disclose a solar battery charger including a storage

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compartment for containment of a backup battery and said internal electrical components are housed within a container that is removably attached onto said hat, whereby said internal electrical components can be easily removed from said hat for washing purposes. Jackson teaches a communication embodiment where a flexible battery stored in the crown of the cap is used for power (See page 6, lines 8-13) and also teaches multiple pockets and fasteners of Velcro for easily removable electronic components and connectors (See abstract and page 4, lines 26-33). Further, Duda teaches a hands free wireless communication device incorporated in a baseball cap with a solar powered rechargeable battery (6) stored in a container under the bill and the entire unit being removable (See Fig 1 and paragraphs 0014 and 0027). It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the solar powered recharger of Duda in the communication cap of Jackson to maintain the battery in a fully charged state and reduce the likelihood of battery replacement.

Regarding claim 21, Jackson further discloses the internal components when activated by the activation means function as either a cell phone, a computer, a calculator, a CD player, a mini-disc player, a palm pilot, or a combination thereof (See page 7, lines 29-33).

Response to Arguments

Applicant's arguments filed 07/05/05 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

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USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the prior art references teach hats in the form of baseball caps for wireless multi-media/communication devices with features common to both prior art references and the combination of which would be obvious with the knowledge generally available to one of ordinary skill in the art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 571-272-7496. The examiner can normally be reached on Monday - Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(571) 273-8300, for formal communications intended for entry and for
informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to: Customer Service Window, Randolph
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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SINH TRAN
SUPERVISORY PATENT EXAMINER

BKE

September 8, 2005